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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani

Summary

In the present report, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, provides an account of his activities from January 2013 to March 2014. He makes a thematic analysis of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, describing the context of its adoption, examining its key provisions and their concrete implications for enhancing the protection of and assistance to internally displaced persons, and examining the progress made in its adoption and implementation, while offering initial recommendations to maximize the potential of this standard to strengthen responses to internal displacement in Africa.

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I. Introduction

1. In the present report, the Special Rapporteur on the rights on the human rights of internally displaced persons provides an account of his activities since his previous report to the Human Rights Council.[1] He also examines the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), giving an outline of the context of its adoption, its key provisions and their concrete impact on enhancing the protection of and assistance to internally displaced persons, taking stock of the progress made in its implementation and, in particular, the importance of its domestication.

II. Mandate and activities of the Special Rapporteur

A. Mandate

2. In accordance with his mandate, as described by the Human Rights Council in its resolution 23/8, the Special Rapporteur has endeavoured to promote a rights-based approach to internal displacement through dialogue with Governments and mainstreaming and advocacy activities within the United Nations and regional organizations. He expresses his appreciation to the Governments that have issued invitations or otherwise engaged with the mandate holder and to the various United Nations and other international organizations that have provided support for his activities.

B. Engagement with countries

1. Georgia

3. Following up on the last visit conducted by the previous mandate holder in 2009, the Special Rapporteur undertook a visit to Georgia from 10 to 14 June 2013 at the invitation of the Government. He visited collective centres and settlements for internally displaced persons in Western Georgia, including Shida, Kartli and Poti, and held meetings with displaced persons themselves. He was, however, unable to visit Abkhazia and the Tskhinvali region/South Ossetia.

4. The Special Rapporteur commends the Government's commitment to provide durable solutions for all internally displaced persons in Georgia and to address the issue of those displaced by natural or human-induced disasters. He noted, however, that there was an urgent need to continue to improve the living conditions and livelihoods of internally displaced persons in the collective centres he visited, and called for the adoption of an integrated approach to address the situation of all displaced persons. He welcomes new opportunities in this regard and urges the Government to consult the said persons and to enable their participation in decisions affecting them in order to achieve durable solutions in safety and dignity, while guaranteeing that their choices are informed and voluntary.

5. The Special Rapporteur notes that the search for durable solutions is still hampered by political deadlock, and calls upon all parties concerned urgently to address the issue of internally displaced persons as a humanitarian one to allow displaced persons wishing to return to their areas of origin to do so voluntarily in safety and dignity. He expresses his

[1] A/HRC/23/44 and Adds.1-2.

concerns at the establishment of a coiled razor wire fence along the administrative boundary line of the Tskhinvali region/South Ossetia, which deprives displaced persons and displacement-affected communities of their freedom of movement and livelihoods on their lands.

2. Serbia and the authorities in Kosovo

6. Following up on the visit conducted by the previous mandate holder in 2009, the Special Rapporteur undertook a visit to Serbia and the authorities in Kosovo, at the invitation of the Government, from 9 to 12 October 2013. The Special Rapporteur visited Belgrade and Pristina, as well as various sites of displacement.

7. The Special Rapporteur strongly recommends that both the Government of Serbia and the authorities in Kosovo, in the context of the European Union accession framework, cooperate to work towards the implementation of durable solutions for internally displaced persons. He commends the Government of Serbia and the authorities in Kosovo for considering local integration as a durable solution option, together with other durable solutions, where possible. He stresses that the key to attaining durable solutions in Serbia and Kosovo lies in providing durable housing for all displaced persons on the model of the regional housing project for refugees, although such a project should be linked to livelihoods, particularly income-generating activities, employment, health, education, water and energy. While welcoming the greater openness to consider local integration as a durable solution, the Special Rapporteur noted that the most immediate need is to improve the livelihoods of displaced persons in their current locations and to provide them, particularly displaced Roma, with adequate services.

8. The Special Rapporteur stressed the need to address other key issues, including the effective resolution of property disputes, including recovery, where possible, of property in places of origin, and effective compensation where property cannot be recovered.

3. South Sudan

9. From 6 to 15 November 2013, the Special Rapporteur undertook a visit to South Sudan at the invitation of the Government. During his mission, the Special Rapporteur visited Juba, Bor and Pibor in Jonglei.

10. Recalling the Government's primary responsibility to assist and protect all internally displaced persons in an equal manner, the Special Rapporteur further emphasized that humanitarian action, constitutional inclusion, development and peacebuilding measures were the cornerstones of durable solutions for displaced persons and returnees. He stressed that civilians, including internally displaced persons, should be spared from violence and abuse by all parties. He called for capacities to be further strengthened and the response to displaced persons should be demilitarized.

11. Following his visit, a new cycle of violence broke out on 15 December 2013 in Juba and quickly spread to other locations in South Sudan. In two press statements issued on 20 December 2013 and 31 January 2014, the Special Rapporteur expressed concern at what had emerged primarily as a political crisis and then evolved into an increasingly ethnically charged conflict across South Sudan, leading to large-scale internal displacement in the compounds of the United Nations Mission in South Sudan (UNMISS). The congested conditions inside UNMISS compounds where internally displaced persons have taken shelter has started to create risks for them. The Special Rapporteur, while recommending the decongestion of the said sites, stresses that this should not be a quick, stand-alone measure in the ongoing crisis, but must be embedded in a long-term comprehensive strategy on internal displacement. The dimensions and complexities of internal displacement require a

strategic response to overcome the divide between humanitarian and development action and to create a common peace dividend.

4. Sri Lanka

12. From 2 to 6 December 2013, the Special Rapporteur undertook, at the invitation of the Government, a visit to Sri Lanka. During his visit, the Special Rapporteur travelled to Colombo, Jaffna, Mullaitivu and Killinochchi, and met with internally displaced persons.

13. The Special Rapporteur welcomed the efforts made by the Government of Sri Lanka to rebuild the infrastructure destroyed during the conflict and the demining in return areas, and stressed that the post-conflict reconstruction process should also focus on addressing durable solutions for all internally displaced persons, both those who had been relocated by the Government and those who had returned to their areas of origin on a comprehensive basis. In the national context of transition from relief to development in the aftermath of conflict, it is essential that the Government and development actors engage in resolving the issue of displaced persons and address their durable solutions needs and livelihoods in development plans, the rule of law, human rights and good governance programmes.

14. The Special Rapporteur welcomed the agreement to conduct a joint needs assessment, which will be vital for establishing agreed sets of statistical data on the number of internally displaced persons who have returned or been resettled. There is a need to complete this exercise expediently in order to establish how many people are still displaced, and also how many still do not have access to their original lands. The Special Rapporteur called for data, disaggregated by gender and age, on internal displacement, for adequate planning, as well as a survey of the intention of displaced persons with regard to durable solutions.

15. The Special Rapporteur expressed concern at the significant number of people still living in protracted displacement, as well as at those who have returned or settled elsewhere in the North but still live in very precarious conditions and need more durable housing, access to social services, and livelihood opportunities.

C. Cooperation with regional and international organizations

16. The Special Rapporteur is pleased to report on his ongoing collaboration with regional and international organizations. He has engaged closely with, inter alia, regional organizations in Africa on the promotion, ratification and implementation at the national level of the Kampala Convention. To this end, the mandate holder continues to support the Government of Somalia on policy issues concerning internally displaced persons and the production of a revised draft of a national policy framework. Capacity-building activities were conducted with members of the Government. Benchmarks on security and land tenure were developed to support efforts to promote durable solutions for displaced persons, and "red lines" were identified in relation to proposed relocation processes, which must respect international standards. The Special Rapporteur provided support to the Government of Liberia in the ratification process of the Convention, which is being discussed in the national Parliament. Furthermore, in 2013, a series of training courses and workshops on the Kampala Convention were convened by the mandate holder with the African Union and other partners. An important development is also the recent adoption of the new national policy in Afghanistan on the rights of internally displaced persons, which followed the involvement of the Special Rapporteur at the request of the Government of Afghanistan in April 2012.

17. The Special Rapporteur participated actively in a joint initiative of the Organization for Security and Cooperation in Europe and the Office of the United Nations High

Commissioner for Refugees (UNHCR) to elaborate a protection checklist to allow a more collaborative approach to addressing displacement and ensuring the protection of displaced populations and affected communities at all stages of conflict. This checklist was launched on 20 February 2014 in Vienna. The Special Rapporteur also collaborated with UNHCR on a Handbook for Parliamentarians on internal displacement[2] published in October 2013.

18. The Special Rapporteur has maintained a strong partnership with civil society organizations (in Geneva, New York and in the field. In particular, he appreciates the support provided by the Brookings-LSE Project on Internal Displacement and the cooperation with the Internal Displacement Monitoring Centre on various issues of mutual interest, as well as with the Joint IDP Profiling Service. In the field, civil society organizations have played a vital role in supporting the mandate holder by sharing information, articulating the human rights impact of internal displacement in different contexts and acting as a liaison with displaced communities, in particular during country visits.

19. From 12 to 14 March 2013, the Special Rapporteur addressed and participated in a workshop on climate change and planned relocation organized by UNHCR in San Remo, Italy. From 2 to 6 September 2013, he led the ninth annual course on the Law of Internal Displacement, held in Kampala and co-organized by the Brookings-LSE Project, the International Institute of Humanitarian Law, UNHCR and the Office of the United Nations High Commissioner for Human Rights (OHCHR). A total of 24 government officials and parliamentarians working on internal displacement from 14 African countries took part in the course. The course provided an opportunity to share a valuable new tool on internal displacement, prepared with the support of the mandate of the Special Rapporteur to inform the development of laws and policies on internal displacement by government officials, parliamentarians and other stakeholders.[3]

20. The Special Rapporteur also participated in numerous other events relating to the issue of internal displacement organized by civil society organizations and other actors, including a discussion organized by the Brookings Institution on "The Kampala Convention on Internal Displacement in Africa: A Human Rights Milestone", held on 26 March 2013; a public event on the intersection of displacement and broader migration flows, hosted by the Brookings Institution on 7 May 2013; a discussion held at Ditchley Park on the protection of civilians, from 16 to 18 May 2013; the heads of agency meeting of the Policy Action Group on Emergency Response Heads of Agencies, held in Ottawa from 19 to 22 November 2013; and a Wilton Park conference on the theme "Addressing implementation gaps: improving cooperation between global and regional human rights mechanisms", from 23 to 25 January 2014.

D. Mainstreaming the human rights of internally displaced persons in the United Nations system

21. During the period under review, the Special Rapporteur continued to support the mainstreaming of the human rights of internally displaced persons within the United Nations system and the wider humanitarian community by participating actively in the work of the Inter-Agency Standing Committee. He participated in two principals meetings, held in

[2] Available from www.unhcr.org/525bee0c9.html.

[3] Brookings-LSE Project, Internal Displacement Monitoring Centre (IDMC), Norwegian Refugee Council, "National Instruments on Internal Displacement: A Guide to their Development", August 2013, available from www.brookings.edu/research/reports/2013/09/03-national-instruments-on-internal-displacement.

Washington, D.C., on 8 May 2013, and in Geneva, on 17 December 2013, at which he highlighted the relevance of the issue of internally displaced persons outside of camps with regard to the priorities of the Committee, and during which Committee members were requested to share relevant experiences with the Special Rapporteur in that regard. He also maintained close collaboration with key United Nations organizations, including OHCHR, UNHCR and the Office for the Coordination of Humanitarian Affairs. He engaged in a constructive dialogue with the agencies on, inter alia, current challenges and responses to internal displacement and potential areas of cooperation, at both headquarters and field levels. He also held periodic briefings on thematic and country activities.

22. The Special Rapporteur participated in several activities organized by United Nations agencies, including the regular meetings and annual retreat of the Global Protection Cluster and activities for the promotion of the Kampala Convention. On 18 and 19 April 2013, he participated in a round table on transitions and solutions organized by the United Nations Development Programme (UNDP), UNHCR and the Government of the Netherlands, in Amsterdam, where international development and humanitarian actors met to review progress and identify ways forward in the response to internal displacement. On 6 June 2013, he attended a thematic seminar of the Global Protection Cluster on "Transitioning from crisis to recovery: the role of protection clusters". He participated in the annual meeting of Special Procedures in Vienna, held from 24 to 28 June 2013, where he was elected Chairperson of the Coordination Committee of Special Procedures for one year. In this context, he participated in the international expert conference on the occasion of the twentieth anniversary of the World Conference on Human Rights, Vienna +20: Advancing the Protection of Human Rights: Achievements, Challenges and Perspectives 20 Years after the World Conference, held on 27 and 28 June 2013 and organized by the Federal Ministry for European and International Affairs of Austria, in cooperation with OHCHR, the Ludwig Boltzmann Institute for Human Rights and the European Training and Research Centre for Democracy and Human Rights of the University of Graz. He also participated in the high-level event for the twentieth anniversary of the Vienna Declaration and Programme of Action in New York, on 25 September 2013, where he advocated for the inclusion of internally displaced persons in the context of the post-2015 development agenda.

23. The Special Rapporteur organized various events in collaboration with partners and sponsors, including a panel discussion on the margins of the sixty-eighth session of the General Assembly on the theme "Durable solutions to displacement: development and peacebuilding dimensions", held on 25 October 2013. The Special Rapporteur also convened a workshop on the theme, "Durable solutions for internally displaced persons: advancing the agenda", in cooperation with OHCHR, UNHCR, UNDP and the Brookings-LSE Project, on 7 June 2013.

24. At the invitation of the United Nations High Commissioner for Refugees, the Special Rapporteur participated in a plenary session panel at the UNHCR 2013 protection dialogue on "Protecting the internally displaced: persisting challenges and fresh thinking", held on 11 and 12 December 2013. He also co-chaired a working group in a dialogue on "Enacting legal instruments and policies to protect internally displaced persons: experiences and lessons". During the dialogue, participants highlighted the need to fill implementation gaps in the protection of displaced persons, to put internal displacement higher on international, regional and national agendas, and to ensure the involvement of internally displaced persons and host communities in decisions affecting them. Calls were also made for better cooperation between humanitarian and development actors from the early stages of emergency situations, and for inclusion of the needs of internally displaced persons in the post-2015 development agenda.

III. The Kampala Convention: a road map for action

A. Introduction and overview

25. Africa is home to nearly one third of the more than 28.8 million persons internally displaced by conflict, generalized violence and human rights violations around the world.[4] Displacement in Africa and globally is also caused by natural disasters and the effects of climate change, as well as by development projects. Data on displacement caused by development projects have not been collected systematically.[5]

26. Although over the past five years, 81 per cent of global displacement by natural disasters has been in Asia, n 2012, the Africa region witnessed a record 8.2 million people newly displaced in 27 countries, more than four times in the figure of the previous four years.[6] In some countries, displacement due to natural disasters further exacerbated the dire situation of people already displaced due to conflict.

27. On 6 December 2012, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (or Kampala Convention) came into force. Its adoption on 23 October 2009, in Kampala, was a milestone for internally displaced persons in Africa and throughout the world. As the world's first legally binding regional instrument on internal displacement, the Convention represented the will and determination of African States to address the problem of internal displacement in a holistic fashion.

28. At the time of writing, 39 of 54 States Members of the African Union had signed the Kampala Convention, while 22 had ratified it.[7] The Convention is an innovative agreement in that it provides guarantees against forced displacement and standards for the protection of and assistance for persons during displacement, as well as with regard to durable solutions. It also addresses the causes of displacement, which are not limited to situations of armed conflicts and human rights violations but also encompass situations of natural or human-made disasters. Moreover, the Convention is unique in that, in its article 2(d), it provides for the obligations and responsibilities of States parties, while also specifying the roles and responsibilities of non-State armed groups, private companies, humanitarian agencies and civil society organizations, the international community, internally displaced persons and communities affected by displacement.

29. Since the adoption of the Kampala Convention, the African Union Commission has spearheaded the promotion, signing and ratification process for the Convention. Its plan of action for the implementation of the Convention has been adopted by the States Members of the African Union, which have thus demonstrated their commitment to the instrument by signing and ratifying it. While the Convention is a momentous step towards enhancing the human rights of internally displaced persons and provides for a solid framework for the effective protection and assistance of those affected by displacement, challenges remain.

30. At the sixteenth session of the Human Rights Council, the Special Rapporteur presented the priority areas for his mandate, and shared his intention to promote actively the ratification by States of the Kampala Convention and to continue to assist in putting in place

[4] IDMC Global Overview 2012: People internally displaced by conflict and violence, Geneva, 2013 (available from www.internal-displacement.org/publications/2013/global-overview-2012-people-internally-displaced-by-conflict-and-violence), p. 9.

[5] Ibid.

[6] Ibid.

[7] Including the Sahrawi Arab Democratic Republic, not a State Member of the United Nations.

policies and legislative frameworks to ensure its implementation at the national level.[8] The scope of the present report is therefore not limited to an analysis of the unique character of the Kampala Convention, but also sets out a proposed course of action to ensure that this innovative and comprehensive framework translates into concrete gains for internally displaced persons.

B. The Convention in context

31. The adoption of the Kampala Convention in 2009 followed five years of consultations, drafting and negotiations by legal experts from States Members of the African Union. This African-led process emerged from the recognition and decision of the Executive Council of the African Union, in July 2004, that a separate and appropriate regional framework should be developed to protect and assist adequately internally displaced persons and to support durable solutions.[9]

32. The development of the Guiding Principles on Internal Displacement was an essential first step in establishing a normative framework on internal displacement, clarifying international minimum standards for protecting and assisting internally displaced persons. Regional and subregional intergovernmental organizations have increasingly acknowledged, relied on and adopted the Guiding Principles,[10] while States have increasingly committed to adhering to the Guiding Principles and to incorporating them into their domestic legal frameworks.[11]

33. In 2006, during the International Conference on the Great Lakes Region, 11 States of the Great Lakes Region adopted a binding Pact on Security, Stability and Development in the Great Lakes Region,[12] comprising 10 separate protocols, including the Protocol on the Protection and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons. The Protocol on the Protection and Assistance to Internally Displaced Persons, which entered into force in June 2008, legally binds Member States to enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems, and to ensure the effective participation of internally displaced persons in developing such legislation.

34. The above-mentioned Protocol on Protection and Assistance to Internally Displaced Persons served as impetus for the initiative by the African Union to draft the Kampala Convention, which further crystallized and advanced a regional approach to protecting the rights of displaced persons in efforts to achieve peace, security and development.[13]

35. The development and adoption of the Kampala Convention should also be seen against the backdrop of national efforts to develop laws and policies on internal displacement, in Africa and throughout the world. To date, 25 Governments, including six in Africa, have adopted a variety of national policies or legislation specifically addressing

[8] A/HRC/16/43, para. 58.

[9] Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V).

[10] See Organization of American States resolution 2667 of 7 June 2011. See also Council of Europe recommendation Rec(2006)6 of 5 April 2006.

[11] A/67/289, paras. 34 and 40.

[12] South Sudan joined the Pact in 2012.

[13] Chaloka Beyani, "The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa", Journal of African Law, vol. 50, No. 2, 2006, pp.187-197.

internal displacement. African States were among the first in the world to adopt national laws and policies based on the Guiding Principles. The six African States to have developed laws and policies on internally displaced persons are Angola (2000), Burundi (2001), Sierra Leone (2002), Uganda (2004), the Sudan (2009) and Kenya (2012), while Somalia and the Democratic Republic of the Congo are in currently developing relevant laws.

36. Even before Nigeria ratified the Kampala Convention in April 2012, the Nigerian authorities were taking steps to better coordinate their response to internal displacement. In 2003, a committee was established to draft a national policy on internally displaced persons to define the role and responsibilities of State agencies and of civil society organizations. The draft policy was presented to the Government in 2011, and was subsequently revised and reviewed by multiple stakeholders. A policy on migration was also drafted in 2013, including provisions on internal displacement. Both policies are due to be presented to the Federal Executive Council for adoption in 2014.[14]

C. Scope of the Convention

37. The Kampala Convention directly incorporates the United Nations Guiding Principles on Internal Displacement,[15] and proceeds from the premise of the primary responsibility of the State in addressing internal displacement. The Convention, however, goes beyond the Guiding Principles by articulating the need for a holistic response to internal displacement based on a combined framework of international human rights law and international humanitarian law. Such a framework provides a platform for all stakeholders – States but also all other groups and entities involved in or affected by internal displacement – to analyse the multiple causes of internal displacement and to identify appropriate responses to these phenomena, including durable solutions. In this regard, the Convention stresses that humanitarian and development actors both have an important role to play in a comprehensive response to problems related to internal displacement. Equally, the Convention stresses the need for the active participation of those affected by displacement, including vulnerable groups of displaced persons and host communities.

1. Obligations of States parties

(a) Protection from involuntary or forced displacement

(i) *Arbitrary displacement*

38. Article 3 of the Kampala Convention recognizes the general obligation of States to refrain from, prohibit and prevent arbitrary displacement of populations, as well as the obligation to prevent some of the underlying causes of internal displacement, such as political, social, cultural and economic exclusion and marginalization, as well as to respect and protect the human rights of internally displaced persons and to respect international humanitarian law.

39. The Convention has made important advances in articulating the right to be protected from arbitrary displacement by elaborating a number of acts that may cause it. While international human rights law does not clearly spell out the right not to be arbitrarily displaced, some components of this right are to be found in the right to freedom of

[14] IDMC, "The Kampala Convention. One year on: progress and prospects", 6 December 2013, available from www.internal-displacement.org/publications/2013/the-kampala-convention-one-year-on-progress-and-prospects-2.

[15] E/CN.4/1998/53/Add.2, annex.

movement and residence, the right to privacy, the right to choose one's own residence and the right to adequate housing.[16] The prohibition of arbitrary displacement has also been addressed to an extent in international humanitarian law.[17] Article 49 of the Fourth Geneva Convention, relative to the protection of civilians in time of international armed conflict, prohibits "individual or mass forcible transfers" as a grave breach of international humanitarian law. This prohibition was later extended to non-international armed conflicts when the second additional Protocol to the Geneva Conventions. State practice establishes these rules as norms of customary international humanitarian law applicable in both international and non-international armed conflicts.[18]

40. The Kampala Convention innovates by listing, non-exhaustively, a wide range of causes of arbitrary displacement, demonstrating that it is not only caused by conflicts. Indeed, in addition to armed conflict and situations of generalized violence or human rights violations, the Convention obliges States parties to protect all persons against policies of racial or other discrimination aimed at or resulting in altering the ethnic, religious or racial composition of the population; displacement due to harmful practices;[19] and forced evacuations in situations of natural or man-made disasters or other scenarios where evacuation is not required by safety or health considerations of those affected. The warning against the use of "safety and health" reasons to justify displacement that is fundamentally arbitrarily is an important safeguard established by the Convention. Similarly, the Convention devotes the whole entire of article 10 to internal displacement caused by development projects carried out by public and private actors.

41. The clear objective here is to prohibit all forms of arbitrary displacement, in all circumstances, including forced evictions. In this regard, the article 4 of the Kampala Convention provides a "catchall" by articulating the obligation of States parties to prevent arbitrary displacement caused by an "act, event, factor or phenomenon of comparable gravity to all of the above" that is not justified under international law, including human rights and international humanitarian law.

42. While the Convention does not define arbitrary displacement as a criminal offence, article 4 (6) it requires States parties to declare as offences punishable by law the worst forms of arbitrary displacement, such as those amounting to genocide, war crimes or crimes against humanity.

(ii) *Disasters and climate change*

43. In 2012 alone, an estimated 7.7 million people were displaced in the wake of natural disasters in countries that have signed or ratified the Kampala Convention,[20] which explains the special attention drawn to natural and man-made disasters in it. The Convention requires States parties to take measures specifically to prevent and mitigate the effects of disasters, including by establishing early warning systems and implementing disaster risk

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[16] IDMC, "The Kampala Convention. One year on" (see footnote 14), p. 25.

[17] See Megan Bradley and Mike Asplet , "Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force", American Society of International Law, vol. 16, No. 36, 6 December 2012.

[18] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules(Cambridge, Cambridge University Press, 2009), p. 457.

[19] Under article 1 (j) of the Kampala Convention, "harmful practices" denotes all behaviour, attitudes and/or practices that negatively affect the fundamental rights of persons, such as, but not limited to, their right to life, health, dignity, education or mental and physical integrity. Female genital mutilation is usually considered a form of harmful practice.

[20] IDMC, "The Kampala Convention. One year on" (see footnote 14), p. 21.

reduction strategies, emergency and disaster preparedness and management measures in areas at risk.

44. In this regard, the States Members of the African Union are implementing a regional disaster risk reduction strategy by means of an extended programme of action (2006-2015), which aims to contribute to the attainment of sustainable development and poverty eradication through a substantial reduction in the social, economic and environmental impact of disasters, including risks associated with climate change.[21]

(b) Protection and assistance, including during displacement

45. Article 5 of the Kampala Convention clearly stipulates that States parties bear the primary duty to provide protection and assistance to internally displaced persons within their territory or jurisdiction.

(i) *Accountability*

46. According to article 9 of the Convention, during displacement, States are required to protect the rights of internally displaced persons, regardless of the cause of their displacement, and to refrain from and prevent discrimination, including on the basis of displacement; genocide, crimes against humanity, war crimes and other violations of international law committed against displaced persons; forms of cruel, inhuman or degrading treatment or punishment, including arbitrary killing, summary execution, arbitrary detention, abduction and enforced disappearance or torture; and sexual and gender-based violence, including rape, harmful practices, the recruitment of children and their use in hostilities, forced labour, human trafficking, smuggling and starvation. States moreover have the obligation to guarantee the safety, security and dignity of internally displaced persons, to respect and ensure their freedom of movement and choice of residence, and to protect them against forcible return or resettlement to areas where their life, safety, liberty and/or health would be at risk.

47. In its article 4 (6), the Convention calls upon States to ensure the individual responsibility for acts of arbitrary displacement perpetrated by State officials,[22] as well as by non-State entities, including multinational companies or private security organizations.[23] In particular, article 7 (4) of the Convention provides that States must hold members of armed groups criminally responsible for human rights abuses and violations of international humanitarian law.

(ii) *Vulnerable groups*

48 Article 9 (2) of the Convention requires States to provide special protection and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of household, expectant mothers, mothers with young children, persons with disabilities and older persons, and to take measures for family tracing and reunification.

(iii) *State obligations with regard to providing assistance*

49. According to article 9 (2) of the Convention, States are required to provide internally displaced persons, to the fullest extent possible and with the least possible delay, with food, water, shelter, health services, sanitation, education and any other necessary social services. Given the important ways in which displacement can affect the resources and coping capacities of communities affected by displacement, including host and return

[21] Ibid..

[22] See also article 12 of the Convention.

[23] IDMC, "The Kampala Convention, One year on" (see footnote 14), p. 13.

communities, States are also required, where appropriate, to extend their assistance to local and host communities. Furthermore, States are to take measures to monitor and evaluate the effectiveness and impact of humanitarian assistance provided to internally displaced persons, in accordance with relevant standards of practice, including those of the Sphere Project.

(iv) *Registration and documentation*

50. Other measures relevant to protection and assistance during displacement that the Convention requires States to take include, but are not limited to, support for registration and the provision or replacement of personal documentation (art. 13). The Convention stresses, however, that the failure to issue internally displaced persons with such documents should not in any way impair the exercise or enjoyment of their human rights.

(c) Obligations relating to durable solutions and compensation

51. Article 11 of the Kampala Convention commits States to promoting and creating satisfactory conditions for durable solutions to displacement, including voluntary and sustainable return, local integration or relocation in safety and in dignity. The Convention, in its article 12, also addresses the right of those affected by displacement to effective remedies, including just and fair compensation and other forms of reparations.

52. States are responsible for consulting internally displaced persons on their options for securing durable solutions to displacement to enable them to make a free and informed choice on return, local integration or relocation, and for ensuring their participation in sustainable solutions.

53. Article 11 (4) of the Convention also requires States to take measures for the resolution of property disputes and the recovery of property, including by establishing simplified property dispute resolution mechanisms for internally displaced persons; and restoring the lands of communities with a special dependency and attachment to such lands upon the return of communities and their reintegration (art. 11 (5)). States are further obliged by article 12 (2) to establish an effective legal framework to provide displaced persons, in accordance with international standards, with just and fair compensation and other forms of reparations for damage incurred as a result of displacement, in accordance with international standards.

The specific case of internally displaced pastoralists

54. Pastoralism in Africa is characterized by a high reliance on livestock as a source of economic and social well-being, and various types of strategic mobility to secure access to water and grazing resources in areas with a high degree of rainfall variability. Pastoralism is found in all regions of Africa, where, in some regions, it is the dominant livelihood. In 2010, pastoral areas were known to occupy some 40 per cent of African land mass.[24] Contrary to assumptions and despite their tradition as nomads, pastoralists do suffer from arbitrary displacement. Displacement of pastoralists is closely linked to the loss of livestock and of access to markets.[25] All causes of internal displacement identified in the Convention can be causes of forcible internal displacement for pastoralists.[26]

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[24] African Union, Policy framework for pastoralism in Africa: Securing, protecting and improving the lives, livelihoods and rights of pastoralist communities, October 2010 (available from http://publications.cta.int/en/publications/publication/1735/), p. 1.

[25] See A/HRC/19/54/Add.2, para. 13.

[26] See IDMC, On the margin: Kenya's pastoralists, March 2014, available from www.internal-displacement.org/publications/2014/on-the-margin-kenyas-pastoralists.

55. Like the Guiding Principles on Internal Displacement and the Protocol on the Protection and Assistance to Internally Displaced Persons, the Kampala Convention pays particular attention – in its article 4 (5) – to this widespread phenomenon, obliging States parties to endeavour to protect communities with special attachment to and dependency on land owing to their particular culture and spiritual values. Any projects with an impact on the right of pastoralists to use land have to be justified by compelling and overriding public interest. The threshold that public interest must reach is therefore higher owing to the ancestral and spiritual attachment that pastoralists have with the land.[27]

2. Obligations relating to humanitarian and other actors

(a) Role of international and humanitarian organizations

56. The Kampala Convention makes clear that States have the primary responsibility for fulfilling the human rights of internally displaced persons. When available resources are inadequate, however, article 5 (6) of the Convention requires States parties to cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. In this regard, States parties should take the steps necessary to ensure effective and unimpeded access by humanitarian organizations and other entities that are in a better position to provide internally displaced persons with protection and assistance. This also applies to efforts to support durable solutions.

57. The Convention further elaborates on this issue in its article 6, which addresses the legal obligations for international organizations and humanitarian agencies. Article 6 requires such entities to discharge their mission in conformity with international law and the laws of the countries in which they operate; to respect the rights of such persons in accordance with the law; and to perform their mission in full respect of the principles of humanity, neutrality, impartiality and independence. The Convention insists on several occasions on the principle of non-discrimination as a requirement for equal protection of and assistance for internally displaced persons.

(b) Obligations relating to the African Union

58. The Kampala Convention also calls for collaboration between States parties and the African Union. It specifically refers to the obligations of the African Union, which has the mandate, as enshrined in article 4 (h) of the African Union Constitutive Act, to intervene in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity. In article 8, the Convention also identifies an important role for the African Union in supporting States parties to fulfil their obligations under the Convention.

3. Non-State actors and members of armed groups

59. Another innovative element of the Kampala Convention is its recognition that non-State actors and members of armed groups must be held accountable for their role in involuntary or forced internal displacement.[28] Seeking to combat impunity, the Convention notably holds members of armed groups accountable for human rights violations against internally displaced persons, stipulating that members of armed groups are to be held criminally responsible for acts that violate the rights of displaced persons under

[27] IDMC, "The Kampala Convention, One year on" (see footnote 14), p. 27.

[28] Non-State actors are defined as private actors who are not public officials of the State or whose acts cannot be officially attributed to it. Armed groups are defined as dissident armed forces or other organized armed groups that are distinct from the armed forces of the State.

international law and national law. Article 7 of the Convention lists a series of actions that armed groups are prohibited from carrying out, in accordance with international law.

60. According to article 5 (11), such emphasis on the obligations of non-State actors and members of armed groups does not take away the primary responsibility of States parties, which are required to take measures aimed at ensuring that armed groups act in conformity with their obligations under article 7.

4. Participation and consultation of internally displaced persons and host communities

61. Throughout the Convention, States parties are reminded of their obligation to consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance (for example, art. 9 (2)), including in decisions relating to durable solutions. States must also take measures to ensure that displaced persons who are citizens of their country of habitual residence may enjoy their civil and political rights, particularly in relation to public participation, such as the right to vote and the right to run for public office. With regard to development projects, article 10 (2) requires States parties to ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects.

62. Such protection also concerns, to a large extent, host communities. Indeed, host communities are significantly affected by internal displacement, given that a great majority of internally displaced persons tend not to live in camps but rather with the said communities and families.[29] The Kampala Convention reflects this reality by requiring States to take appropriate measures to take into account the needs of host communities. This also implies their involvement and participation in assessments to ensure that their needs are taken into consideration for appropriate humanitarian and development responses.

5. Monitoring and compliance with objectives

63. To monitor the implementation of the Kampala Convention, States parties are required to establish a Conference of States Parties (art. 14). States parties are also required to cooperate upon the request of a concerned State party or the Conference of States Parties, which is to convene regularly under the facilitation of the African Union (art. 14.2),to protect and assist internally displaced persons (art. 5.2). To date, the Conference of States Parties has never convened despite the provision in article 14 (2). The Special Rapporteur has repeatedly expressed his wish for the Conference of States Parties to be established in the near future.

64. Two other mechanisms for reporting on compliance are outlined in the Kampala Convention. States must report on the measures they have taken to give effect to the Convention whenever they present their reports under article 62 of the African Charter on Human and Peoples' Rights (art. 14.4). States Members of the African Union that have joined the African Peer Review Mechanism (must also report on such measures when they present their reports under the Mechanism (art. 14.4).

[29] IDMC, "The Kampala Convention, One year on" (see footnote 14), p. 27.

D. Domestication and implementation

1. Requirements for domestication and the scope of national instruments on internal displacement

65. An effective response to internal displacement almost always requires a solid enabling policy and legislative framework. Existing laws can hinder the ability of internally displaced persons to realize their rights or might not ensure that the specific assistance and protection needs of displaced persons are met.[30] The Convention therefore provides, in its article 3 (2), for the incorporation of States' obligations under the Convention into domestic law by enacting or amending relevant legislation on the protection of and assistance to displaced persons in conformity with their obligations under international law. The same article requires States parties to take other measures, such as national and local policies and strategies on internally displaced persons, accounting also for the needs of host communities.

66. A comprehensive national instrument on internal displacement should mention relevant standards with regard to internal displacement, such as the Kampala Convention, the Guiding Principles on Internal Displacement and the Protocol on the Protection and Assistance to Internally Displaced Persons (for relevant States); adopt a holistic approach to displacement, from prevention to the achievement of durable solutions; and respond to all forms of displacement, irrespective of the causes.

2. Developing a national instrument on internal displacement

67. At present, six African countries have adopted or issued policies, laws or decrees relating specifically to internal displacement: Angola, Burundi, Kenya, Sierra Leone, the Sudan and Uganda. Other countries, including the Democratic Republic of the Congo, Nigeria and Somalia, are currently in the process of developing, or have already announced, draft national policies or legislation, a process that the mandate holder has continuously followed and supported. It is interesting to note that those countries are not systematically the ones who are legally bound by the Convention. Indeed, of the above-mentioned States, only Angola, Sierra Leone and Uganda are concerned, and the laws and policies developed by those States were adopted before their ratification of the Convention.

68. While the said laws and policies are a positive development, the domestic frameworks that have been adopted to date vary in scope, the guarantees of protection and assistance to internally displaced persons, and the coverage of relevant issues. Not all the laws and policies include an appropriate definition of an internally displaced person[31] or clearly identify institutional responsibilities, and some address only a particular cause or stage of displacement, such as conflict or return, while others focus only on particular rights.

69. Significant activities in support of the development of national internal displacement frameworks to which the mandate holder has contributed include the *Manual for Law and Policymakers*, which provides guidance to national authorities seeking to develop domestic legislation and policies addressing internal displacement.[32] Other documents providing guidance for developing a national instrument on internal displacement include a manual on

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[30] Brookings-Bern Project on Internal Displacement, Protecting Internally Displaced Persons: A Manual for Law and Policymakers, October 2008, p. 27.

[31] According to the Guiding Principles on Internal Displacement and the Kampala Convention, the fact of being an internally displaced person does not imply any legal status. An appropriate definition of an internally displaced person should encompass all causes of displacement.

[32] See footnote 30.

the law or policy development process,[33] which complements the substantive approach of the manual for law and policymakers, and the Handbook for Parliamentarians on internal displacement.[34] These manuals distil years of lessons learned and good practices to assist law and policymakers in drafting laws and policies that address internal displacement or in amending existing laws and policies to encompass the rights of internally displaced persons. They are also useful tools for civil society and international organizations to consult.

70. A consultative national instrument development process encompasses several stages, including the initiation, preparation, organization, validation, adoption and implementation of the instrument.[35] While each State party will have its own processes for developing national laws and policies on different issues, the consultative process described in the paragraphs below is recommended for the development of effective national instruments on internally displaced persons. Although Kenya is not a party to the Kampala Convention, its efforts to develop a national policy on internal displacement stands out as an example of a good practice and should be built upon to guide other countries in the African Union.

(a) Initiation

71. During the initiation process, relevant authorities commit to developing a national instrument on internal displacement, and then communicate the decision to relevant national, regional and international stakeholders, which have an important role to play in assisting in its development. In Kenya, the need for a comprehensive legislative response to internal displacement was identified in 2010, when the Parliament established the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons in Kenya to examine Government action on displacement and the relevant laws governing the issue.[36]

(b) Preparation

72. The preparation phase aims at, inter alia, defining key notions, gathering data on internal displacement, and deciding on the appropriate legal framework to address internal displacement and the support needed from relevant stakeholders. In the case of Kenya, in February 2011, a strategic planning workshop was convened by the Parliamentary Select Committee, where perspectives on the key concerns with regard to internal displacement were addressed by government ministries and the National Protection Working Group on Internal Displacement.[37]

(c) Organization

73. During the organization phase, a government body should be designated to lead the process. Experience shows that it is important that the Government lead have political clout, financial and human resources and knowledge of internal displacement issues. The Special

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[33] National Instruments on Internal Displacement (see footnote 3).

[34] See footnote 2.

[35] See footnote 3.

[36] See Danish Refugee Council and Refugee Consortium of Kenya, *Behind the scenes. Lessons Learnt from Developing a National Policy Framework on Internal Displacement in Kenya*, January 2013 (available from http://drc.dk/fileadmin/uploads/pdf/IA_PDF/Great_Lakes_PDF/BehindTheScenes_KenyaIDPReport.pdf), p. 27.

[37] See ibid. The Working Group was established in 2009 by the transformation of the IDP Protection Cluster set up in 2008 to respond to the post-election displacement crisis. It is co-chaired by the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenyan National Commission for Human Rights, with a broad membership of civil society, national and international organizations.

Rapporteur reiterates the need to consult a wide range of national actors, including internally displaced persons and displacement-affected communities themselves. All the relevant tools for the development and drafting of the instrument should be identified – such as the above-mentioned manuals, the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons[38] and the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters[39] so that the lead Government entity can then organize the drafting and consultation process.

(d) Consultation and drafting

74. During the consultation and drafting stage, a bottom-up approach should be taken to ensure that the views and concerns of internally displaced persons are adequately reflected and addressed, as they are the ones who will be primarily affected by the national instrument. In Kenya, a number of workshops and bilateral meetings were held and attended by the Parliamentary Select Committee, representatives of government ministries, the Special Rapporteur and the staff supporting his mandate. The Truth, Justice and Reconciliation Commission was also consulted. The Parliamentary Select Committee carried out 26 public hearings and field visits around the country from March to October 2011 to gain further insights into the plight of internally displaced persons in Kenya.[40]

75. The fifth stage in the process of developing a national instrument allows for amendments or changes to be made, and is useful for ensuring buy-in from relevant stakeholders and the effective implementation of the instrument. In Kenya, the initial draft legislation was reviewed in October 2011 during a workshop convened jointly by the National Protection Working Group on Internal Displacement and the Parliamentary Select Committee. The Working Group and the Committee established a taskforce with the aim of reviewing the draft legislation and ensuring consistency with the draft policy on internally displaced persons, the Guiding Principles on Internal Displacement and the Kampala Convention. A validation workshop was then held in December 2011 by the Working Group and the Committee to consider and approve the reviewed draft legislation.[41]

76. With regard to the adoption of the national instrument, in Kenya, the Parliamentary Select Committee tabled its final report before Parliament in February 2012, and the bill on internally displaced persons was tabled in April 2012. The bill underwent three readings before being passed by Parliament on 4 October 2012. The President assented to the bill on 31 December 2012.[42]

(e) Implementation and monitoring

77. Finally, the implementation and monitoring phase is an essential and often ongoing one. As implementation will be achieved gradually, it can be helpful to prioritize implementation activities, ensuring that emergency needs are addressed while longer-term needs and concerns are not overlooked. Implementation may also require capacity-building at various levels of government. Dissemination and awareness-raising among government officials at all levels, as well as among internally displaced persons and other displacement-affected communities, in relevant languages and through appropriate channels in order to ensure the most vulnerable populations are reached, are also critical steps to ensure effective

[38] Available from https://docs.unocha.org/sites/dms/Documents/IASC%20Framework%20DS%20for%20IDPs.pdf.

[39] Available from https://docs.unocha.org/sites/dms/Documents/Operational%20Guidelines.pdf.

[40] Danish Refugee Council and Refugee Consortium of Kenya, *Behind the scenes. Lessons Learnt* (see footnote 36), p. 27.

[41] Ibid.

[42] Ibid.

implementation. It is also important that obstacles and gaps in implementation are promptly identified and addressed. Monitoring and evaluation should be carried out regularly by an entity with monitoring expertise and experience, and the national institutional focal point should convene to take stock of the implementation process.

IV. Conclusions and recommendations

A. Conclusions

78. **The adoption of the Kampala Convention represents a significant advance in standard setting for the increased protection and assistance of internally displaced persons. While the Convention is related to internal displacement in Africa, the standards and guarantees it sets are international in character and can serve as good practices for other regions of the world. The commemoration in 2014 of the thirtieth anniversary of the Cartagena Declaration on Refugees could be a fruitful opportunity to consider how regional cooperation may be further expanded to enhance protection and assistance for internally displaced persons in regions such as the Americas, building on the experience acquired in the development and implementation of the Kampala Convention.**

79. **Much work, however, remains to be done to translate this important instrument into practice and to secure concrete improvements in the protection of and assistance to internally displaced persons. The Kampala Convention is a practical and important tool that addresses internal displacement at the international, regional and national levels. Political will is essential to the effective implementation of the Convention, which requires that the necessary budgetary and structural supports be mobilized. Timely support from the international community, including donors, United Nations agencies and other stakeholders, is critical to ensure that this objective is met. Indeed, the Convention itself was framed on the basis of a partnership between the African Union, international organizations and civil society.**

80. **The Special Rapporteur considers that the bridge promoted in the Kampala Convention between humanitarian responses to displacement and the involvement of development actors is of fundamental importance. Indeed, it is increasingly recognized that displacement is not simply a humanitarian issue but one that also requires the sustained engagement of development actors.**

81. **In addition to awareness-raising and advocacy for the ratification of the Kampala Convention, the Special Rapporteur calls for a common platform to ensure sharing the wealth of documents, guiding tools and best practices relating to the issue of internally displaced persons. The domestication process of the Kampala Convention is a crucial stage that needs additional focus and resources.**

82. **The Special Rapporteur highlights the importance of adopting a human rights-based approach to internal displacement, which would enable all stakeholders involved in internal displacement to work hand-in-hand through its different phases.**

83. **The Special Rapporteur reiterates the importance of establishing accountability mechanisms and strengthening reconciliation processes to ensure that those alleged to have perpetrated human rights violations against internally displaced persons are brought to justice, and that the communities affected by conflict and internal displacement can move towards peace. Only if internally displaced persons are effectively protected and assisted, in accordance with the provisions set out in the**

Kampala Convention, can durable solutions be achieved, for the benefit of both displaced persons and host communities.

B. Recommendations

1. States

84. **The Special Rapporteur recommends that States effectively address internal displacement on their respective territories and ensure that the Kampala Convention is implemented at the national, regional and international levels.**

2. States Members of the African Union

85. **States Members of the African Union should, in accordance with article 3 (2) of the Kampala Convention, ratify and implement the Convention. States of the International Conference on the Great lakes Region should also implement the Pact on Security, Stability and Development in the Great Lakes Region.**

86. **Given that the Kampala Convention was drafted and negotiated with a view to its implementation, States should continue to cooperate in joint efforts to, on the one hand, ratify the Convention, and domesticate it, on the other. In this regard, and with the support of the African Union, a working group should be established to support the domestication of the Convention at the national level and to formulate a plan of action for the region.**

87. **The Special Rapporteur also recommends that States Members of the African Union:**

(a) **Adopt comprehensive and detailed national instruments, institutional and legal frameworks to address internal displacement, in accordance with the Kampala Convention and informed as relevant by the AU Model Law; and establish a coordination mechanism under the relevant ministry, involving all stakeholders, including civil society organizations, for the development of national policy;**

(b) **Develop strategies and take measures that contribute to the prevention of internal displacement and the promotion of durable solutions in a timely manner, including by building resilience and mitigating the negative impact of displacement on the human rights of internally displaced persons, recognizing that the measures shown to have a positive effect include contingency strategies, early warning systems and community intervention mechanisms, as well as mechanisms that strengthen the meaningful participation of displaced persons in decisions that have an impact on their lives;**

(c) **Integrate displacement and durable solutions into national development plans;**

(d) **Adopt disaster preparedness and disaster management laws, and ensure that existing laws on disaster preparedness are comprehensive in nature, so as they encompass disaster risk reduction and management; proactive strategies to prevent or minimize displacement; planned relocations, when appropriate; pre-emptive internal migration, when this is based on sound national policies and used as a coping mechanism in the case of slow-onset disasters; and durable solutions;**

(e) **Launch an advocacy campaign to raise awareness of the Kampala Convention and the need to implement it, and to build capacity, financial and political support and interest from all stakeholders, including donors, to ensure its implementation;**

(f) **Establish or strengthen the mechanisms promoting the engagement and participation of local authorities, communities, civil society organizations and the private sector in issues relating to internal displacement; community participation should involve those who are most vulnerable; in particular, potentially vulnerable groups, such as women, children, older persons and persons with disabilities, should be fully included in disaster prevention, response planning and implementation to ensure that their specific needs are addressed;**

(g) **Increase the role of parliamentarians in strengthening efforts to ratify and implement the Convention in their oversight and representative role;**

(h) **Strengthen the pivotal role of national human rights institutions to improve national responses to internal displacement, including in awareness-raising, monitoring of displacement situations and returns, investigating individual complaints, advocating for and advising Governments on the drafting of national policies to address internal displacement, and monitoring and reporting on the implementation of national policies and legislation;**

(i) **Take the measures necessary to ensure accountability for violations of applicable international law, including by armed groups and non-State actors, as a cause of or during displacement;**

(j) **Promote and facilitate the participation of internally displaced persons in political, reconciliation and peace processes that affect them, and establish the conditions necessary to enable them to have access to the durable solution of their choice and to rebuild their lives at the earliest opportunity, including the establishment of adequate conflict resolution mechanisms, including in relation to land disputes and civil status, for example birth registration, and property title registries, in accordance with the Kampala Convention;**

(k) **Ensure that the budgetary and structural support necessary is mobilized to implement the above recommendations.**

3. The international community, the African Union, United Nations agencies, other humanitarian and development actors, and civil society organizations

88. **All relevant actors should continue to promote and strengthen the work of regional organizations and mechanisms on all aspects of internal displacement, including with regard to the development and implementation of regional instruments and guidance on internal displacement, in accordance with international standards.**

89. **United Nations agencies should continue their efforts to keep the issue of internal displacement firmly on the United Nations agenda; in particular, the strengthened framework for the protection of and assistance to internally displaced persons laid out by the Kampala Convention should inform international and regional responses to relevant crises in Africa, including through the Security Council.**

90. **The international community, including United Nations agencies, should ensure that the issue of internal displacement is addressed in the post-2015 development agenda.**

91. **In order to ensure satisfactory monitoring of State compliance with the Kampala Convention, the African Union should consider establishing the Conference of States Parties, in accordance with article 14 of the Convention.**

92. **Civil society organizations and other relevant actors should continue their work of awareness-raising and dissemination of the Kampala Convention, and their work to promote the ratification of the instrument across Africa, including through training activities.**

93. **Relevant actors should increase international support in order to strengthen local and national capacities and legal frameworks and policies to address displacement by means of specific programmes, including the transfer of know-how, secondment of expert staff and provision of technical support. In particular, all relevant actors should consider the opportunity of adopting a subregional approach (for example, with the Economic Community of West African States, whose approach is quite specific), as well as the importance of cooperating with United Nations agencies in relation to their respective expertise. At the same time, the capacity of the African Union and the International Conference on the Great Lakes Region should be strengthened to provide technical support to countries seeking to establish mechanisms for the protection of internally displaced persons that respond to country-specific issues and contexts.**

94. **Development actors should be involved in and support the drafting of national policies on internal displacement, and build capacity in terms of knowledge, human resources and infrastructure.**

95. **The international community, humanitarian agencies, donors, development actors and civil society organizations should enhance the capacity of internally displaced persons to advocate for their rights, and ensure that alleged perpetrators are brought to justice.**

96. **Development actors should implement projects that specifically protect the human rights of internally displaced persons. Such projects should address in particular the availability and accessibility of basic services, the restoration of livelihoods, and housing and the protection of land and property rights, in full consultation with displaced persons, and affected communities where relevant.**

97. **All relevant stakeholders should monitor, support and build capacity to address climate change-related internal displacement, including displacement due to both sudden and slow-onset natural hazards. In this regard, relevant international and national actors should, inter alia, increase awareness and understanding of displacement caused by slow-onset natural disasters; develop concrete strategies and measures to follow up on relevant provisions of the Cancun Agreement; and promote a human rights-based approach in all actions and strategies to address displacement related to natural disasters and climate change. Relevant actors should support Member States in developing adaptation measures that are comprehensive and include disaster risk reduction and prevention, and the minimization of internal displacement, as well as durable solutions. Relevant actors should also promote mechanisms for the engagement of affected communities, and develop guidance for States on how to ensure that displacement is taken into account in the climate change debate, on available normative standards and on the human rights implications of that type of displacement.**

98. **All relevant stakeholders should continue to identify and address the various causes of internal displacement, emerging issues and areas that need to be strengthened through improved understanding, methodologies, approaches and responses. Such areas include, inter alia, the impact of global megatrends on internal**

displacement; responses to internally displaced persons outside of camps; frameworks and approaches to better promote the meaningful participation and empowerment of internally displaced women; strategies to revive practical and political action in protracted displacement situations; and bridging the humanitarian/development gap by analysing and addressing the structural, institutional and operational factors that sustain it and impede early recovery and durable solutions.

99. **The international community should, through increased awareness-raising and capacity-building, support civil society organizations and national human rights institutions in integrating the human rights of internally displaced persons into their national work plans.**

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani

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Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani

Addendum

Follow-up mission to Georgia** ***

Summary

The present report contains the findings and recommendations of the Special Rapporteur on the human rights of internally displaced persons subsequent to his follow-up visit to Georgia from 10 to 14 June 2013. The objective of the visit was to examine the human rights situation of internally displaced persons in the country since the last assessment made by the previous mandate holder, Walter Kälin, in September 2010.

Although the Government of Georgia has made considerable progress in providing durable solutions for all internally displaced persons and in addressing the issue of those displaced by natural or human-induced disasters, continued efforts to improve the living conditions and livelihoods of internally displaced persons in the collective centres visited are needed, alongside the adoption of an integrated approach to address the situation of all internally displaced persons.

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The establishment of a coiled razor wire fence along the administrative boundary line of the Tskhinvali region/South Ossetia, Georgia, which deprives internally displaced persons and displacement-affected communities of their freedom of movement and livelihoods, is of major concern. Although the Special Rapporteur did not visit Abkhazia, Georgia, he understood that similar problems exist along the administrative boundary line of Abkhazia. One of the main obstacles in the search for durable solutions for internally displaced persons in Georgia remains the absence of political solutions to the conflict. In that connection, the Special Rapporteur calls upon all parties to approach durable solutions from a humanitarian and development perspective and to take all necessary measures to ensure that all internally displaced persons can exercise their right to make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to locally integrate or to resettle elsewhere in the country.

Annex

[English and Russian only]

Report of the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Georgia (10–14 June 2013)

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I. Introduction

1. In accordance with his mandate contained in Human Rights Council resolution 14/6 and at the invitation of the Government of Georgia, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, conducted an official follow-up visit to Georgia from 10 to 14 June 2013. The objective of the visit was to re-examine the human rights situation of internally displaced persons and to follow-up on the visits conducted by his predecessor, the Representative of the Secretary-General on the human rights of internally displaced persons, in 2010, 2009, 2008 and 2005.

2. The Special Rapporteur met with the President of Georgia; the Minister, the First Deputy and the Deputy Minister for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia; the Minister and the First Deputy Minister of Foreign Affairs; the State Minister for Reconciliation and Civil Equality (then the State Minister for Reintegration); the Minister of Regional Development and Infrastructure; the Minister of Health, Labour and Social Affairs; the Minister of Agriculture; the Chairman of the Supreme Court; the Speaker of the Parliament; the Chairperson of the Human Rights and Civil Integration Committee; and the Chairman of the Legal Affairs Committee. The Special Rapporteur also met with the Public Defender of Georgia and held meetings with representatives of civil society and with members of the international community accredited in the country.

3. The Special Rapporteur visited Tbilisi, and met with internally displaced persons in Shida Kartli and Poti. Those meetings were organized by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (MRA), respectively. The Special Rapporteur regrets that access to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, was denied by the authorities in control there, which prevented him from visiting those areas, as he had intended.

4. The Special Rapporteur expresses his sincere gratitude to the Government of Georgia for its full cooperation. The Special Rapporteur is also grateful to all his interlocutors, especially internally displaced persons who kindly shared their experiences and different perspectives with him. He looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of the recommendations contained in this report.

5. The visit was ably coordinated by the office of the Human Rights Adviser for the South Caucasus of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNHCR. The Special Rapporteur is grateful for all the logistical, administrative and substantive support he received, which facilitated the conduct of the visit. He would also like to thank the United Nations Resident Coordinator and the country team, as well as the Representative of the Secretary-General for Georgia for their informative briefings and advice.

6. While in Georgia, the Special Rapporteur participated in the seminar, "Working towards durable solutions: ways forward for internally displaced persons in Georgia", organized by the Norwegian Refugee Council, as well as in a seminar organized by the Internally Displaced Women's Association "Consent". The Special Rapporteur expresses his gratitude to the organizers of those valuable seminars.

7. The present report is intended to provide an updated assessment of the human rights situation of internally displaced persons in Georgia. An updated overview of the legal framework for the protection of the rights of internally displaced persons and an analysis of the challenges and progress made in that regard are provided in section II. Section III

discusses current opportunities and challenges for an integrated approach to the situation of internally displaced persons, in the context of the onset of a new registration exercise for all internally displaced persons, and the obstacles to achieving durable solutions to displacement. Section IV contains the Special Rapporteur's findings and action-oriented recommendations for the Government of Georgia, civil society, the international community and internally displaced persons.

8. While the durable solutions should be approached from a humanitarian and development perspective and not be dependent on a political settlement, the continuing absence of a political solution to the conflict, in addition to the worrying security and human rights situation and inadequate housing conditions, continues to remain a major obstacle to achieving durable solutions for internally displaced persons from Abkhazia, Georgia, and from the Tskhinvali region/South Ossetia, Georgia. The Special Rapporteur reiterates the recommendation made by his predecessor and calls upon all parties to take all necessary measures to ensure that all internally displaced persons can exercise their right to make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to locally integrate or to resettle elsewhere in the country.[1] Against this background, the Guiding Principles on Internal Displacement[2] (Guiding Principles) represent a crucial tool for public policy. They should be used as a practical guide to ensure that Georgia assumes its responsibility to act with due diligence in providing protection, assistance, reintegration and development support for internally displaced persons.

9. The Special Rapporteur notes that the Government's general approach to internal displacement is based on the temporary nature of displacement, so that it considers that assistance and protection to internally displaced persons should also be temporary. A senior government official indicated that the Government sought to strike a balance between unifying the country and finding a viable solution for internally displaced persons. The Special Rapporteur considers that, while return to place of residence and unification of the country might be two interrelated matters, an inclusive and integrated approach to displacement that takes into account the voluntary nature of return, in line with the international standards laid out in the Guiding Principles,[3] is necessary.

II. Protection of and assistance to internally displaced persons in Georgia

A. Legal protection

10. The Special Rapporteur welcomes the recent steps taken by Georgia to strengthen the legal framework for the protection of the rights of internally displaced persons. A draft law on internally displaced persons-persecuted persons from the occupied territories of Georgia was being drafted at the time of the visit.[4] The Special Rapporteur appreciates the fact that the draft law seeks to address one of the main concerns reiterated by his predecessor regarding internally displaced persons.[5] The political will shown by the Government of Georgia and relevant stakeholders in addressing gaps in the national

[1] A/HRC/16/43/Add.3, para. 37; see also A/HRC/13/21/Add.3 and Corr.1 and 2, para. 47; A/HRC/10/13/Add.2 paras. 59–61; and E/CN.4/2006/71/Add.7, paras. 48.

[2] E/CN.4/1998/53/Add.2.

[3] Ibid., principle 28.

[4] The draft law was subsequently adopted in February 2014 and entered into force on 1 March 2014, abrogating the 1996 Law of Georgia on Forcibly Displaced Persons-Persecuted Persons.

[5] See A/HRC/16/43/Add.3.

legislation on internally displaced persons and ensuring its compliance with international standards is to be recognized. Consultations were held between MRA and other stakeholders, including other relevant ministries, civil society and UNHCR, during the drafting of the law, and a number of provisions were incorporated on the basis of that exchange of views.[6]

B. Progress made and remaining challenges

11. The draft law contains several important provisions which align the Georgian legal framework on internally displaced persons with the Guiding Principles. Article 5 of the draft law grants protection to "every person living in Georgia", and provides for the Government to have the prerogative to undertake preventive measures to avoid displacement and protracted displacement; to minimize the negative consequences of displacement; and to ensure that internally displaced persons enjoy their rights to life, dignity, safety and freedom when displacement is inevitable.

12. Improvement of the socioeconomic conditions of internally displaced persons had already been addressed by the previous mandate holder, who had insisted that the Government not rely solely on the market to provide livelihood opportunities.[7] With the new legislation, the economic and social protection of internally displaced persons is guaranteed with respect to the right to an allowance and social assistance (arts. 11 and 12), family unity and adequate housing (art. 13), rights relating to living space (art. 14), the protection of property rights (art. 15) and the right to social protection (art. 16). The Special Rapporteur considers that this is a significant step towards ensuring greater access to social protection for all internally displaced persons.

13. Articles 6 and 7, respectively, of the draft law expand the definition of "internally displaced person" and prohibit discrimination on the grounds of displacement. With the new legislation, all citizens of Georgia and stateless persons residing in Georgia are protected from displacement. However, while discrimination on the grounds of displacement is prohibited for all, the definition of "internally displaced person" is exclusive to situations of forced displacement as a result of "occupation of the territory by a foreign State, aggression, armed conflict, mass violence and/or massive human rights violations". The Special Rapporteur was informed that the Government planned to develop legislation for communities displaced as a result of environmental changes, known as "eco-migrants". He encourages the Government of Georgia to ensure that the proposed legislation indeed defines the rights and guarantees for legal, economic and social protection for persons who have been internally displaced owing to natural and human-induced disasters, in accordance with applicable international standards.

14. The Special Rapporteur notes that the draft law on internally displaced persons-persecuted persons from the occupied territories of Georgia contains no provisions for persons with specific needs, including women, persons with disabilities, refugees, migrant workers, children, stateless persons and the elderly. The Special Rapporteur was informed by the Government that the rights of individuals with special needs, including internally displaced persons, were regulated by the Law of Georgia on Social Protection of Individuals with Disabilities; that the specific needs of internally displaced persons during the resettlement process were considered in Ministerial Order No. 320 of MRA, dated 9 August 2013, in which the specific needs of children and elderly people were also

[6] See UNHCR concluding observations on the seminar on the Law of Georgia on Forcibly Displaced Persons-Persecuted Persons, held in Georgia on 10 and 11 May 2013, para. 3.

[7] A/HRC/16/43/Add.3, para. 16.

considered; and that the new law of Georgia on internally displaced persons also applied to stateless persons. The Special Rapporteur also notes the Government's argument that the protection of the rights of refugees and foreigners needs a separate framework and thus their rights are regulated by the Georgian laws on Refugee and Humanitarian Status and on Legal Status of Foreigners and Stateless Persons. However, he encourages the Government of Georgia to ensure that the draft law incorporates and codifies those separate legislative instruments and legal measures applicable to internally displaced persons in a cohesive protection framework.

15. The Special Rapporteur was informed that a revised action plan for the period 2012-2014 was adopted by governmental decree on 13 June 2012. The revised action plan moves forward with durable housing solutions and contains a strong focus on socioeconomic measures for internally displaced persons. A coordination mechanism, the Steering Committee, is also provided for and has the mandate to support the socioeconomic integration of internally displaced persons, provide proper living conditions and durable housing solutions for them, eliminate their dependence on the State and include the most vulnerable internally displaced persons in the unified State social programme.[8] Monitoring the transparency of the activities for implementing programmes for internally displaced persons is also envisaged, with a special role attributed to the Steering Committee, and the involvement of other stakeholders being counted on, including that of civil society, international organizations and the Government of Georgia.[9] Similarly, article 17 of the draft law on internally displaced persons provides for participation by internally displaced persons in the implementation of activities for their integration, so that "the socioeconomic conditions necessary for safe and dignified life are created".[10] Improving the participation of internally displaced persons in the planning and implementation of programmes aimed at ensuring durable solutions is essential.

16. The Special Rapporteur welcomes the fact that civil society representatives were invited to actively participate in the formulation of the State strategy on internally displaced persons that was adopted in 2007. That positive experience could inspire the planning of future activities. In particular, the Government should provide better information and systematically consult with internally displaced persons themselves so that they can participate in decisions that directly affect them.

III. Search for durable solutions for internally displaced persons in Georgia

A. New opportunities for an integrated approach to the situation of internally displaced persons in Georgia

17. Solutions can only be considered to be "durable" if they are sustainable and a number of conditions are fulfilled, including enjoyment by the persons concerned of the protection of the State of nationality (for citizens) or residence; the voluntariness of the decision to return or settle elsewhere; the prevalence of safety and security in areas of settlement or return; real prospects for restitution of or compensation for lost property; no

[8] Georgia, "Action Plan for the Implementation of the State Strategy on Internally Displaced Persons during 2012-2014", para. 5.2. Available from http://mra.gov.ge/res/docs/201311211211332665.pdf.

[9] Ibid., para. 5.5.

[10] Georgia, Draft law on internally displaced persons-persecuted persons from the occupied territories of Georgia, art. 17.3.

discrimination in the enjoyment of rights and equal access to public services and economic opportunities.[11]

18. In that context, the Special Rapporteur stresses the primary responsibility of States to facilitate durable solutions to displacement. Such solutions include, in accordance with the Guiding Principles, sustainable reintegration at the place of origin (return), sustainable local integration in areas where internally displaced persons take refuge (local integration) and sustainable integration in another part of the country (settlement elsewhere in the country).[12]

19. The Special Rapporteur notes with satisfaction that the 2007 State strategy for internally displaced persons, for the first time, reflected a commitment by the Government to provide durable solutions and allow for local integration of all internally displaced persons — a shift from the previous exclusive focus on their return. After new displacements occurred in August 2008 as a result of the conflict on the territory of Georgia, government assistance focused on durable housing options for both old and new caseload internally displaced persons. The Special Rapporteur believes that a stronger focus on needs-based approaches targeting the most vulnerable would improve the efficiency of government assistance to internally displaced persons. There is some recognition that internally displaced persons share some of the same socioeconomic challenges as other vulnerable groups in the country, and the advocacy efforts promoting a better inclusion of internally displaced persons into major government reforms and assistance schemes should build upon the 2013 United Nations Development Programme (UNDP) publication, *Economic and social vulnerability in Georgia*,[13] which also refers to internally displaced persons.

20. The Special Rapporteur welcomes the three phases of the action plan, namely, the renovation of living space in some collective centres and the transfer of ownership rights to the occupants; the construction of new apartment blocks and transfer of ownership; and financial support for families to buy or improve their own housing. The Special Rapporteur also welcomes the parallel implementation of the first and second phases of the action plan.

21. The Special Rapporteur appreciated the organization by the Norwegian Refugee Council of the seminar, "Working towards durable solutions: ways forward for internally displaced persons in Georgia". The seminar was an excellent opportunity to hear what relevant actors are doing with regard to achieving durable solutions for displacement, and to explore different avenues to overcome current obstacles to return.

22. A key element for achieving durable solutions has been the implementation of a new registration exercise for all internally displaced persons, which began on 1 August 2013.[14] The process was regulated by Ministerial Order No. 287 of 16 July 2013, issued by MRA. Registration of internally displaced persons continued until 27 December 2013, but they were still able to register at the central MRA office in Tbilisi until 1 April 2014. Subsequent to the end of the registration exercise, internally displaced persons can still register by contacting the MRA hotline to schedule an appointment for registration.

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[11] See UNHCR, Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, June 2010. available from http://www.unhcr.org/4c2355229.html.

[12] A/68/225, para. 23.

[13] Franziska Gassmann, George Berulava and Michael Tokmazishvili, *Economic and social vulnerability in Georgia* (UNDP, 2013). Available from http://www.undp.org.ge/index.php?lang_id=ENG&sec_id=24&info_id=11751.

[14] See UNHCR, "Monitoring of IDP Registration in Georgia (15 September–14 October 2013)", Interim Report No. 3 (Tbilisi, 22 October 2013); also Council of Europe, "Consolidated report on the conflict in Georgia (April 2013-September 2013)", 29 October 2013 (SG/Inf (2013) 38).

23. The aim of the registration exercise was to update information in the internally displaced person database regarding numbers, place of residence and family composition for all internally displaced persons. These data will be used as a basis for identifying households and individuals with a view to addressing their specific needs and finding durable solutions for them. Detailed household and individual data is essential in the context of Georgia, given the need for targeted assistance programmes with regard to housing, livelihoods, local integration and durable solutions. The results of the registration will also be used to update the national policy on internally displaced persons as well as serve as a monitoring tool to evaluate the interventions supporting the populations affected by displacement.

24. Although MRA had conducted registration exercises in the past and has a comprehensive database, most of the data are outdated and do not correctly reflect the current place of temporary residence nor the exact family composition of internally displaced persons, among other things.

25. Until now, the main focus was on internally displaced persons living in collective centres, while assessment of internally displaced persons living in private accommodation remained limited. Hence, the new registration exercise will help to better identify all categories of internally displaced persons.

26. The Special Rapporteur was informed that housing assistance was included in the 2007 State strategy for internally displaced persons as one of the main areas of focus. Ownership has been regarded as the only acceptable form of tenure security. In many cases, there is a lack of baseline data that would enable the interventions to be truly needs-based. Moreover, the selection processes for government housing assistance are marked by a lack of transparency and have often been at odds with the agreed procedures and criteria.[15]

27. Furthermore, the privatization process through which internally displaced persons may be offered ownership of their living spaces in collective centres is a commendable initiative that offers good potential for durable housing solutions for many internally displaced persons. Initiated in 2009, the process almost came to a halt in 2010 and 2011, which created a large backlog and also added legal uncertainty about the current status of and future plans for specific collective centres.

28. The Special Rapporteur welcomes the Government's reactivation of the privatization process in 2012, with some 7,000 families being granted ownership of their living units in the run-up to the October 2012 elections. Nevertheless, a certain lack of transparency in the process, in 2012, made it difficult to assess the quality and the final impact of that round of privatization. The MRA-led Privatization Working Group is being reactivated in order to constitute a forum to analyse remaining challenges and to provide regular updates on the privatization process throughout Georgia.

29. On the other hand, internally displaced persons currently living in private accommodation have largely been left out of the Government's current housing programmes, despite the fact that many live in inadequate housing situations.[16] For this rather diverse group of internally displaced persons, it is crucial that data on their socioeconomic needs, including housing, is gathered in order to inform tailor-made housing assistance. The Special Rapporteur welcomes the fact that several international actors,

[15] See Public Defender of Georgia, *Annual Report 2012: The situation of human rights and freedoms in Georgia*, chapter on human rights conditions of the internally displaced persons, p. 348 and following.

[16] For more details, see Norwegian Refugee Council, "Privately accommodated internally displaced persons in Georgia: needs assessment", 2013.

including UNHCR and the Norwegian Refugee Council, have successfully implemented housing schemes for internally displaced persons living in private accommodation over the years, an experience that could be replicated within the Government's housing programmes.

30. The Special Rapporteur regrets that the involvement of internally displaced persons in the planning and implementation of housing programmes that affect them has been reportedly non-existent. Also, specific vulnerabilities of internally displaced persons have not been major criteria for the design of solutions or for the selection of beneficiaries, to date.

31. During his visit, the Special Rapporteur went to Poti accompanied by officials from MRA. The construction work in Poti is being carried out in the framework of a project entitled IDP III, which is funded by the European Union. Construction work is in progress for seven new apartment blocks, which will provide accommodation for about 280 families. The work is being funded through the Municipal Development Fund of Georgia.

32. At several meetings with government officials, it was stressed that providing internally displaced persons with durable housing solutions remained a high priority for the Government in 2013. The implementation of the State strategy on internally displaced persons based on the updated action plan would continue throughout 2013 and would cover the housing needs of internally displaced persons living in collective centres. In 2013, the MRA budget was doubled in order to improve the living conditions of internally displaced persons and provide them with decent and durable housing. As already mentioned, the construction of seven apartment blocks in Poti for about 280 internally displaced families is in progress, with the financial support of the European Union, and the preparatory work for the rehabilitation of 28 apartment blocks is under way.

33. The Special Rapporteur welcomes the fact that MRA has provided apartments to 480 internally displaced families and has also rehabilitated 15 apartment blocks for 425 internally displaced families (i.e. 1,300 internally displaced persons). Furthermore, MRA received 32 buildings from the Ministry of Economy, which will be rehabilitated to accommodate internally displaced persons in Tbilisi, Rustavi, Kutaisi, Akhaltsikhe, Zugdidi, Martvili, Poti and Makhinjauri, among other places.

34. According to governmental sources, some progress has been made in the transfer of ownership of private accommodations to some 876 internally displaced families. About 746 extremely vulnerable internally displaced families received one-time monetary support from MRA. MRA also covered the accommodation rent for 71 extremely vulnerable internally displaced families.

35. During the mission, the Special Rapporteur visited the joint UNHCR-UNDP agricultural project in Kaspi, Shida Kartli region, and welcomes this innovative contribution. The main objective is to develop rural livelihoods for the vulnerable internally displaced communities and their host communities through a return to small-scale farming and an increase in the productivity levels in Shida Kartli. This joint agricultural project will contribute to raising household income for farming families and increasing food security at the household level.

36. The joint agricultural project is aimed at increasing resources and achieving more sustainable development through collective efforts. Its main goal is to provide a strategy for transition from direct individual humanitarian assistance to sustainable development for both internally displaced persons and their host communities in Shida Kartli. The Special Rapporteur commends this project as a good model for joint efforts by humanitarian and development actors towards finding durable solutions.

37. There are 16,811 internally displaced persons residing in Shida Kartli.[17] In addition, there are 33,965 people in 40 conflict-affected villages along the administrative boundary line, who have returned to their homes and are in a situation similar to that of internally displaced persons.[18]

38. Living conditions for many communities in the region are harsh. The 2008 conflict led to widespread destruction of property and the displacement of a large number of people. The lack of employment opportunities in Georgia and the discontinuation of trade opportunities in newly inaccessible areas have affected both the displaced and the resident population.

39. Agriculture in Shida Kartli is one of the main sources of income, mostly owing to the high fertility of the soil in the region. However, there is a lack of irrigation water and restricted storage capacity for their crops.

40. The joint agricultural project reaches out to the entire population with the aim of enhancing the integration of the internally displaced population and preventing social tensions due to perceived inequality and addressing poverty. The joint project represents a comprehensive approach to supporting the most vulnerable internally displaced communities in Shida Kartli. The programme will deliver long-term benefits to internally displaced persons and their host communities. The project envisages establishing a value chain to link farmers with farmers' associations, and agricultural processing facilities with service providers. It aims, inter alia, to strengthen capacity through training, extension support and access to markets. The joint project will also rehabilitate a kindergarten in Dvani, a village affected by razor wire fencing, and construct a drinking water source in Kaspi Municipality. The target groups are the host communities and persons internally displaced from the 2008, or earlier, conflicts in the Kaspi Municipality area (Teliani, Khovle, Doesi and Grakali).

41. The main project activities include providing support to farmers in order to help them increase yield and productivity, including quality training and advice by the farmers' association, and demonstrations of food processing and preservation. The project is also helping to improve access to agricultural markets through harvest consolidation and long-term contracts.[19]

42. The Special Rapporteur notes with satisfaction the decision of the Constitutional Court that internally displaced persons from villages adjacent to the Tskhinvali region/South Ossetia, Georgia, are entitled to the same rights as internally displaced persons from the region. The decision was handed down during the Special Rapporteur's visit. The applicants were persons who had been displaced from a village adjacent to, but falling outside of, the Tskhinvali region/South Ossetia, Georgia. Their complaint challenged the compatibility of a clause relating to the definition of an internally displaced person in the law on internally displaced persons (amended in December 2011), which strictly limited internally-displaced-person status to persons who had been displaced from the occupied territories, with article 14 of the Constitution of Georgia relating to the principle of equality and non-discrimination.

43. Reiterating that the principle of equality enshrined in article 14 of the Constitution required the State to treat equally persons who were essentially in equal situations, the

[17] See UNHCR, "Monitoring of IDP Registration in Georgia (15 September–14 October 2013)", Interim Report No. 3 (Tbilisi, 22 October 2013).

[18] Data as of December 2013, from UNHCR.

[19] See UNDP-UNHCR joint programme, "Livelihood development of vulnerable communities in Shida Kartli region".

Constitutional Court found that the applicants and persons displaced within the Tskhinvali region/South Ossetia, Georgia, were essentially equal since the reasons for their displacement, and their protection concerns, were the same. In the light of that decision, the Special Rapporteur affirms his support for the technical capacity project agreed with the Supreme Court to collect and collate decisions taken by courts in Georgia on internally displaced persons, and for the organizing of a judicial workshop on the European Convention on Human Rights. As the above-described case also involved civil society and the Georgian Young Lawyers Association, the involvement of civil society in that project would be critical. Also in the light of the Constitutional Court's decision, the Special Rapporteur recommends that the Government of Georgia ensure that all internally displaced persons enjoy the right to an adequate standard of living.

B. Obstacles to achieving durable solutions to internal displacement in Georgia

44. According to data provided by the Ministry of the Interior, there are 246,549 internally displaced persons in Georgia.[20] The Special Rapporteur expressed his concern that the majority of the internally displaced from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, have been unable to return to their homes. The prospects of return for those displaced remain poor for several reasons, including concerns for their security. As described in the report of the Representative of the Secretary-General on his follow-up mission to Georgia,[21] the biggest challenge still remains the integration of internally displaced persons who have been living in protracted displacement for over 20 years. The Special Rapporteur is concerned about the continued lack of integration of those affected by the 1993 conflict.

45. One of the main obstacles to the achievement of durable solutions has been the installation of coiled razor wire fences along the administrative boundary line of the Tskhinvali region/South Ossetia, Georgia, which have adverse effects on the internally displaced persons. The installation of those barriers accelerated in 2013.[22]

46. The Special Rapporteur is also concerned about the effects that the coiled razor wire fence has on the local population since it creates a tangible obstacle to access to land, property, water and livelihood activities. The Special Rapporteur welcomes the establishment in Gori of a monitoring group on socioeconomic and infrastructural problems affecting the villages along the administrative boundary line. The monitoring group is expected to evaluate the effects on the local population along the boundary line, in terms of loss of access to personal property, communal property and natural resources, as well as the direct effect of those losses on the livelihoods of the local population. The monitoring group will also evaluate other specific concerns, such as legal protection, physical safety and freedom of movement.

47. The fencing process along the administrative boundary line of the Tskhinvali region/South Ossetia, Georgia, reportedly accelerated in 2013. A monitoring group was established early in 2013, and in July and August 2013, UNHCR and local authorities initiated the monitoring of villages affected by the new fencing measures. The Special

[20] See UNHCR, "Monitoring of IDP Registration in Georgia (15 September–14 October 2013)", Interim Report No. 3 (Tbilisi, 22 October 2013).

[21] A/HRC/10/13/Add.2.

[22] See UNHCR, "Interim monitoring report on borderization measures in Gori municipality, Shida Kartli" (internal document); also Council of Europe, "Consolidated report on the conflict in Georgia (April 2013-September 2013)", 29 October 2013 (SG/Inf (2013) 38).

Rapporteur witnessed the installation of fences in Gugutiantkari and expressed his concern that internally displaced persons living in adjacent villages might be seriously affected by issues such as blocked access to land, water and livelihood activities, which would result in inadequate living conditions. Further collateral effects of the fencing process would be the resulting security issues, restricted freedom of movement and residence, limited access to property, including to farm land, houses, churches and cemeteries, which would result in a further decrease of people-to-people contacts and a lack of income-generating activities.[23]

48. The Special Rapporteur was informed[24] that an estimated 45,000 internally displaced persons spontaneously and/or seasonally returned to their homes in the Gali district in Abkhazia, Georgia, over the years and that they had maintained their status as internally displaced persons and continued to receive the related allowances. The Special Rapporteur regrets that those spontaneous returnees continue to face difficult living conditions, including housing and livelihood issues, and restrictions on their freedom of movement. The Special Rapporteur visited collective centres in Shida Kartli, where internally displaced persons from the 1993 conflict were living in deplorable conditions. He stressed the importance of ensuring that the rights of those internally displaced persons were guaranteed on a non-discriminatory basis, jointly and simultaneously with the rights of later waves of internally displaced persons.

IV. Conclusions and recommendations

49. **The Special Rapporteur on the human rights of internally displaced persons acknowledges the Government's progress in the search for durable solutions for all internally displaced persons in Georgia. Nevertheless, further joint efforts are necessary to overcome the obstacles to durable solutions. In this spirit, the Special Rapporteur presents the following conclusions and recommendations.**

50. **New opportunities now exist for the adoption of an inclusive integrated approach for all waves of internally displaced persons in Georgia, in accordance with the international standards contained in the Guiding Principles on Internal Displacement. The new opportunities include the proposed revised legislation on internally displaced persons; the realignment of the 2007 Action Plan for the Implementation of the State Strategy on Internally Displaced Persons with the proposed law; the onset of a new registration exercise for all internally displaced persons that should also profile their vulnerability and needs; and the formulation by the Government of inclusive policies in the fields of health, land, agriculture, education and employment-generating activities. In the latter connection, the Special Rapporteur recommends that the Government ensure that the new policies target internally displaced persons, including internally displaced persons with disabilities, so as to improve their livelihoods and combat their vulnerability in the country.**

51. **The Special Rapporteur commends the continuing commitment by State authorities to improving the living conditions of internally displaced persons by providing durable housing to those who were displaced as a result of the 2008 conflict. However, there is an urgent need to improve the living conditions and livelihood opportunities of internally displaced persons who were displaced in the early 1990s, and who are still living in collective centres in deplorable conditions. The Special**

[23] UNHCR, "Interim monitoring report on borderization measures in Gori municipality, Shida Kartli" (internal document).

[24] See Norwegian Refugee Council/Internal Displacement Monitoring Centre, "Briefing note on the Special Rapporteur's visit to Georgia".

Rapporteur encourages the Government of Georgia to take all necessary measures to guarantee adequate living conditions to all internally displaced persons in conformity with the Guiding Principles on Internal Displacement. In that connection, the Special Rapporteur urges the Government to initiate the rehabilitation of collective centres and the building of new housing and livelihood programmes that would allow the affected internally displaced persons, in particular those from the conflict in the 1990s, to enjoy the right to an adequate standard of living, in conformity with principle 18 of the Guiding Principles.

52. The Special Rapporteur welcomes the new registration exercise for internally displaced persons, which started on 1 August 2013. That exercise is crucial to addressing specific needs and identifying opportunities for durable solutions for all internally displaced persons. Detailed household and individual data are essential in the context of Georgia, given the need for targeted assistance programmes in relation to housing, livelihood, local integration and durable solutions. In that regard, the Special Rapporteur recommends that the Government make the best possible use of such data in order to design or update national policy on internally displaced persons. The new registration exercise should also be used as a tool for monitoring and evaluating populations affected by displacement. Moreover, the Special Rapporteur recommends that the Government ensure that the situation of internally displaced persons living in private accommodation is also addressed following the registration exercise.

53. The Special Rapporteur is concerned that most internally displaced persons suffer from inadequate living conditions, unemployment and lack of livelihoods. In that respect, the Special Rapporteur recommends that the Government integrate internally displaced persons into broader development plans and initiatives, rather than developing a comprehensive strategy on livelihoods for internally displaced persons only.

54. The Special Rapporteur encourages the Government to share information relating to the enhancement of living conditions and other livelihood measures with internally displaced persons, international partners and civil society. He also encourages the Government to consult with internally displaced persons and enable their involvement in decisions affecting them. This is of the utmost importance in establishing conditions and means for achieving durable solutions for internally displaced persons in safety and dignity, based on their informed and voluntary choice of durable solutions.

55. The Special Rapporteur urges the Government to ensure the full and effective enjoyment of the human rights of internally displaced persons, in particular women, to access land and property. Moreover, the enjoyment of internally displaced persons of the right to housing, land and property is an essential component of the building of durable solutions. The Special Rapporteur reminds the Government that internally displaced persons are entitled to restitution of or compensation for their property, regardless of whether they choose to return, integrate locally or resettle elsewhere.

56. The Special Rapporteur strongly condemns the installation of the coiled razor wire fence along the administrative boundary line of the Tskhinvali region/South Ossetia, Georgia, which has the effect of depriving internally displaced persons of their freedom of movement and livelihoods, as well as preventing access to land and property, and calls on those responsible for installing the fence to stop the process and remove all installed barriers. The Special Rapporteur recommends that the Government ensure effective monitoring of the protection of the human rights of the internally displaced persons concerned. Furthermore, the Special Rapporteur recommends that the Government of Georgia and the de facto authorities of South

Ossetia ensure the full enjoyment of the human rights of those internally displaced persons, including the rights relating to freedom of movement and access to livelihoods.

57. The Special Rapporteur notes with satisfaction the decision of the Constitutional Court that internally displaced persons from villages adjacent to the Tskhinvali region/South Ossetia, Georgia, are entitled to the same rights as internally displaced persons from that region. Furthermore, he recommends that the Government ensure that all internally displaced persons enjoy the right to an adequate standard of living.

58. The Special Rapporteur commends the Government for its efforts in drafting revised legislation on internally displaced persons, and recommends that that law be in conformity with international human rights standards, in particular the Guiding Principles on Internal Displacement. Particular attention should be paid to vulnerable groups among the internally displaced to ensure that they are able to fully enjoy their rights. The Special Rapporteur notes that the Government is planning to pass a new law on eco-migrants; he encourages the Government to ensure that the proposed draft law indeed defines the rights and guarantees for legal, economic and social protection for persons internally displaced as a result of natural and human-induced disasters, in accordance with international standards.

59. The Special Rapporteur recommends that the Government ensure that the definition of an internally displaced person in the draft law on internally displaced persons as well as in the proposed draft law on eco-migrants is in conformity with the definition contained in the Guiding Principles on Internal Displacement. Furthermore, the Special Rapporteur is concerned about the lack of consultation with internally displaced persons themselves regarding the draft law and encourages the Government to consult with internally displaced persons on decisions and legislation affecting them.

60. The Special Rapporteur recommends that the action plan to implement the 2007 State strategy on internally displaced persons be reviewed, and that it be revised and updated, as necessary, on a regular basis in order to take into account the evolving needs of internally displaced persons, including, in particular, those living in collective centres or in private property. It is crucial that civil society and the internally displaced persons themselves be fully consulted in the review and implementation of the action plan.

61. The Special Rapporteur commends the Government and, in particular, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees for the efforts made to build new houses for internally displaced persons affected by the 1990s and the 2008 conflicts. It is important that shelter solutions be made durable through a needs-based approach. In that regard, the Special Rapporteur encourages the Government to move forward with the integration process through systematic efforts which go beyond infrastructure and give more attention to the creation of employment and livelihood opportunities for internally displaced persons.

62. One of the main obstacles in the search for durable solutions for internally displaced persons in Georgia remains the absence of political solutions to the conflict, as has been already observed by the previous mandate holder in his reports. In that connection, the Special Rapporteur calls upon all parties to approach durable solutions from a humanitarian and development perspective and to take all necessary measures to ensure that all internally displaced persons can exercise their right to

make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to locally integrate or to resettle elsewhere in the country.

63. **The Special Rapporteur welcomes the joint UNHCR-UNDP programme on livelihood development in Shida Kartli and encourages the relevant United Nations agencies to develop further joint projects to the benefit of the sustainability of solutions for internally displaced persons.**